Supreme Court, U.S.
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No. 05-1373

In The
Supreme Court of the United States

JOYCE ANNE DABISH

Petitioner,

vs.

DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264

Respondents.

On Petition For Writ Of Certiorari To The United States Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Sixth Circuit violate the Petitioner's right to due process by ruling on a matter that clearly was not in It's jurisdiction and by so ruling in a manner that clearly prevented the Petitioner from having the opportunity to proceed with a timely filing of that motion in the correct jurisdiction?

2. Was not the Sixth Circuit clearly negligent in It's judicial duty to permit full due process by putting the Petitioner's motion on It's docket and by ruling on a matter that was not specified in It's court rules as even being a matter covered under It's judicial discretion?

3. Do not the actions of the Sixth Circuit clearly constitute an example of how cases that do not belong on the court dockets clearly impede the judicial process and in turn clearly deny Petitioner's their full right to all legal avenues in the judicial process?

4. Did the Sixth Circuit's denial of the Petitioner's motion constitute an abuse of juridical discretion by the Sixth Circuit in hearing any case outside of It's stated jurisdiction and specified court rules?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
CITATION OF REPORTS OF OPINIONS ENTERED IN THE CASE	1
BASIS FOR SUPREME COURT JURISDICTION	1
CONSTITUTION PROVISIONS INVOLVED IN THE CASE	1
STATEMENT OF THE CASE	2
ARGUMENT	2
A. The Third Amendment Section 1 and 2 give power to the Supreme Court and to all lower courts in the land with final jurisdiction in the Supreme Court	2
B. Abuse of judicial discretion	3
C. Denial of due process	3
D. Violation of Amendment VI of the Bills of Rights	3

TABLE OF AUTHORITIES

Page

STATUES

U.S. C. s 1251 1

Amendment III
Of the Constitution 2

Bill of Rights
Amendment VI 3

CITATIONS OF REPORTS OF OPINIONS ENTERED IN THIS CASE

Dabish vs. DaimlerChrysler Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of Aerica; Stamping Plant United Automobile Workers Local 1264 (6th Circuit 2005) App. 1
The opinion of the Court of Appeals is not published
The opinion of the District Court is not reported. App. 5

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Sixth Circuit entered It's judgement on September 19, 2005. Petitioner seeks review of that judgement on a writ of certiorari.

This Court has jurisdiction under the third amendment to the constitution which gives judicial power to all lower courts and final jurisdiction to the Supreme Court. This Court has jurisdiction under 28 U.S. C. s 1251 to review on a writ of certiorari the judgement of a federal court of appeals. Also, Amendment VI of the Bill of Rights guarantees due process to all persons before any court.

CONSTITUTION PROVISIONS INVOLVED IN THIS CASE

This involves the Constitution of the United States, Ament III, which provides in Section (1)

> The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

STATEMENT OF THIS CASE

On March 31, 2004 Petitioner's claim of wrongful discharge was denied by Federal District Court in Detroit. Petitioner sought new counsel David Sinutko who forced Petitioner to file an appeal to the Sixth Circuit instead of filing a Motion to Remand the mater back to the District Court in Detroit. Since David Sinutko had never filed a Notice of Appearance to represent the Petitioner he decided to leave the case using non-payment of legal fees as an excuse. Petitioner was then left to continue the case In Pro Se. The Petitioner filed July 14, 2004 to remain the matter back to Detroit Federal Court. The Sixth Circuit never notified the Petitioner that the filing was in the wrong jurisdiction and then waited until February 9, 2005 to issue a denial opinion without still informing the Petitioner of the wrong jurisdiction. The Petitioner appealed the denial and on April 13, 2005 the Sixth Circuit again denied the Petitioner's appeal and did finally inform the Petitioner that the Motion was filed in the wrong jurisdiction. The Petitioner filed the Motion to Remand on May 11, 2005 and was denied by the District Curt on May 25, 2005.

The Petitioner appealed to the Sixth Circuit who filed a denial on September 19, 2005.

ARGUMENT

A. THE THIRD AMENDMENT SECTIONS 1 AND 2 GIVE POWER TO THE SUPREME COURT AND TO ALL LOWER COURTS IN THE LAND WITH FINAL JURISDICTION IN THE SUPREME COURT

There are no published cases of Petitioners filing In Pro Se in the wrong jurisdiction for a motion to remand where it

is possible to locate some possible precedent. The Sixth Circuit in ruling on a case that should never have been on It's docket became a real example of **being part of the problem rather that part of the solution.** Amendment VI of the Bill of Rights guarantees due process to all persons before any court.

In ruling on a case filed by a Petitioner who was acting In Pro Se in a mater that was clearly not covered by the Sixth Circuit's *Court Rules* put the Sixth Circuit in violation of It's own stated Rules of Procedure. If any court is going to establish Rules of Procedure to be followed by litigants on the one hand then that same court must on the other hand also adhere to its stated rules. The Supreme Court cannot uphold decisions rendered were court rules were violated.

B. The actions of the Sixth Circuit in ruling on a case that should not have been entered on It's docket does not display judicial discretion rather it displays an abuse of judicial discretion and a disregard for the rights of litigants who are struggling to act in In Pro Se. In the Petitioner's case the question of wrong jurisdiction for filing the Motion to remand was never brought to the Petitioner's attention. The Petitioner clearly did not know that certain motions are only filed in certain courts since the Petitioner is not a lawyer.

C. Clearly the actions of the Sixth Circuit denied the Petitioner the right of due process along with the right to exercise all,of the legal options that should have been available for use to the Petitioner. The Courts actions speak for Itself. If the Sixth Circuit was able to tell the Petitioner in the opinion of April 13, 2005 that the Petitioner was in the wrong jurisdiction then quite clearly the Court could have informed the Petitioner

upon receiving the filing and by returning said filing with the correct filing information. If the Sixth Circuit had proceeded to immediately inform the Petitioner of the filing error the Petitioner may not have come before this Supreme Court.

D. The Opinion of the Sixth Circuit violates Amendment VI of the Bill of Rights and clearly denies the Petitioner due process. Although there are no clear case law with a situation of a Petitioner acting In Pro Se where a Petitioner was denied a remand back to the federal district court because of a filing in a wrong jurisdiction the Sixth Circuit's disregard for the rights of the Petitioner In Pro Se cannot be over looked by this Supreme Court. To uphold the Sixth Circuit would be to tell any Petitioner who sought to act In Pro Se that there was no reason to believe that such Petitioners would receive fair and equal treatment and be informed of their rights and nay filing errors.

This Supreme Court must not allow any court to override the rights of litigants acting In Pro Se. The Supreme Court must insure that all litigants will receive fair and equal treatment even when acting in their own defense. For this Supreme Court to do other wise would clearly state that every litigant will not be accorded fair and equal treatment in any court across the country.

This Court should accept review and reverse the decision below.

Respectfully submitted,

Joyce Anne Dabish,
In Pro Se

No. 04-1583

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOYCE ANNE DABISH PLaintiff-Appellant,	)	
v.	)	ORDER
DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264 Defendants-Appellees.	)	

Before: KENNEDY, CLAY, and GIBBONS, Circuit Judges.

Joyce Anne Dabish again moves to remand her appeal in this labor law case because she received ineffective representation from her counsel. As this court has previously stated, there are no Fifth or Sixth Amendment rights to effective counsel in a civil case as this one. *Father & Sons Lumber & Bldg. Supplies, Inc. vs. NLRB*, 931 F-2d 1097 (6th Cir. 1991). The motion to remand is denied. Dabish is warned that if she raises this issue again she will be subject to sanctions. *See* Fed. R. App. P. 38.

Dabish received a six-month extension of time in which

to file her brief due to illness. Dabish's motion shows that she has now recovered sufficiently to be able to file her brief. The clerk's office is directed to establish a briefing schedule.

ENTERED BY ORDER OF THE COURT

Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOYCE ANNE DABISH
PLaintiff,

Case No. 02-72659
Hon. Gerald E. Rosen

v.

DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264
Defendants.
_____/

ORDER DENYING
PLANTIFF'S MOTION TO REMAND

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on May 25, 2005

PRESENT: Honorable Gerald E. Rosen
United States District Judge

In an opinion and order and accompanying judgment dates March 31, 2004, the Court granted Defendants' motions for summary judgment and dismissed this case. Plaintiff subsequently appealed this ruling to the Sixth

Circuit Court of Appeals, and this appeal remains pending. Recently, Plaintiff requested that the Sixth Circuit "remand" the case back to this Court, apparently so that she can pursue additional discovery that, in her view, her attorney neglected to seek while the district court litigation was pending. The Sixth Circuit denied this motion, as well as a subsequent motion for reconsideration, holding that Plaintiff could not abandon her appeal and resume the district court litigation without first persuading this Court to vacate its summary judgment decision via a motion under Fed. R. Civ. P. 60(b).

In an apparent effort to heed the Sixth Circuit's instructions, Plaintiff has filed a May 11, 2005 motion requesting that this Court "remand" this case from the Court of Appeals. In essence, Plaintiff seemingly wishes to resume the litigation in this Court, evidently so that she can conduct further discovery in support of her claims. Unfortunately, despite the Sixth Circuit's instructions in its two recent orders, Plaintiff has failed to suggest why an award of Rule 60(b) relief might be warranted here, or even which subsection of this Rule might arguably apply.

Nonetheless, it is abundantly clear to this Court that no such relief can be awarded. The relevant clause of Rule 60(b) under the circumstances is subsection (1), which authorizes relief from a judgment that was the product of "mistake, inadvertence, surprise, or excusable neglect," Fed. R. Civ. P. 60(b)(1). More specifically, challenges to the adequacy of an attorney's representation of a client typically are addressed under the "mistake" or "excusable neglect" clauses of Rule 60(b)(1). See United States vs. Reyes, 307 F.3d 451, 456-58 (6th Cir. 2002); McCurry vs. Adventist Health System/
Sunbelt, Inc., 298 F.3d 586, 593-95 (6th Cir. 2002); FHC Equities, L.L.C. vs. MBL Life Assurance Corp., 188 F.3d 678, 684-87 (6th Cir. 1999). Yet, these same decisions

further establish that "clients must be held accountable for the acts and omissions of their attorneys," and that "out-and-out lawyer blunders — the type of action or inaction that leads to successful malpractice suits by the injured client — do not qualify as 'mistake' or 'excusable neglect' within the meaning of [Rule 60(b)(1)]." McCurry, 298 F.3d at 594-95 (internal quotation marks and citations omitted).

So far as can be gleaned from her motion and supporting documents, this is precisely the theory of relief advanced by Plaintiff , namely, that she should be given a second bite at the discovery apple because of the inadequate performance of her counsel while this case was pending before this Court. The courts have been unwilling to make an exception from the usual finality of judgments under these circumstances. See McCurry, 298 F.3d at 595. In addition, Plaintiff's request for relief under Rule 60(b)(1) is untimely, as her motion was filed more that one year after the entry of the Court's March 31, 2004 opinion and order and judgment. Consequently, the Court finds no basis for granting relief under Rule 60(b), and Plaintiff must pursue any challenges to this Court;s rulings via her pending Sixth Circuit appeal.

For these reasons,

NOW,THEREFORE, IT IS HEREBY ORDERED that Plaintiff's May 11, 2005 motion to remand is DENIED.

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: May 25, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 25, 2005, by electronic and/or ordinary mail,

s/LaShawn R. Saulsberry
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOYCE ANNE DABISH
PLaintiff,

Case No. 02-72659
Hon. Gerald E. Rosen

v.

DAIMERCHRYSLER CORPORATION, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA; STERLING STAMPING PLANT; UNITED AUTOMOBILE WORKERS LOCAL 1264
Defendants.
_____/

OPINION AND ORDER GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on May 31, 2004

PRESENT: Honorable Gerald E. Rosen
United States District Judge

I. INTRODUCTION

Plaintiff Joyce Anne Dabish filed a *pro se* complaint with this Court on June 26, 2002, seeking to revoke her

acceptance of an early retirement offer made by her employer, Defendant DaimlerChrysler Corporation, and negotiated by her collective bargaining representative, Defendant UAW Local 1264. In an October 21, 2002 first amended complaint filed on fer behalf by her present counsel, Plaintiff advances claims under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C.§ 185, the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and Michigan common law, all in an effort to rescind her apparent acceptance of DaimlerChrysler's early retirement offer.

By motions filed on February 28, 2003 and March 4, 2003, respectively, Defendants DaimlerChrysler and UAW Local 1264 now seek summary judgment in their favor on all of Plaintiffs claims, state and federal alike. In untimely responses filed on May 30, 2003 and June 2, 2003, Plaintiff concedes that she cannot pursue a state-law claim of wrongful termination in violation of public policy, where any such state-law claim surely would be preempted by federal labor law in light of Plaintiff status as member of UAW Local 1264 whose employment with DaimlerChrysler was governed by a collective bargaining agreement. Nonetheless, Plaintiff contends that she has produced sufficient evidence in support of her breach-of-contract and ERISA claims, where she purportedly was told by union representatives that she could revoke her acceptance of the early retirement plan at any time up until she executed the final retirement paperwork. Defendants filed reply briefs in further support of their motions on June 11 and 12, 2003.

Having reviewed the parties' submissions and the record as a whole, the Court finds that these materials sufficiently disclose the relevant allegations, facts, legal arguments, and that oral argument would not significantly aid the decisional process. Accordingly, the Court will decide Defendants'

motions "on the brief." See Local Rule 7.1(e)(2), U.S. District Court, Eastern District of Michigan. This Opinion and Order sets forth the Court's rulings.

II. FACTUAL BACKGROUND

The pertinent facts of this case are relatively straightforward. Moreover, there is scant opportunity for dispute of these facts, where Plaintiff took no depositions, Defendants apparently deposed only Plaintiff herself, and the record otherwise consists almost entirely of materials related to the early retirement offer extended by Defendant DaimlerChrysler to certain of its hourly employees, including Plaintiff.

Plaintiff Joyce Ann Dabish has been employed by Defendant DaimlerChrysler Corporation since September of 1976, and was 61 years old at the time she commenced this suit. At all relevant times, Plaintiff worked as an hourly production worker at DaimlerChrysler's Sterling Stamping Plant in Sterling Heights, Michigan. The terms of Plaintiff's employment were governed by a collective bargaining agreement ("CBA") between DaimlerChrysler and the Defendant UAW.

In March of 2002, DaimlerChrysler promulgated an Incentive Program for Retirements ("IPR") for eligible union-represented hourly employees at several of the company's manufacturing facilities, including the Sterling Stamping Plant. The IPR was negotiated with the UAW as part of DaimlerChrysler's company-wide effort to reduce its work force through voluntary attrition. The IPR offered cash incentives and vehicle vouchers, but did not alter the pension or other benefits an employee otherwise would receive upon retirement.

The IPR was offered to employees in the form of a

letter describing the program, which was captioned "2002" Incentive Program for Retirements Conditional Offer Letter." (First Amended Complaint, Ex. A.) The letter established a "conditional offer period from March 13, 2002 through March 28, 2002," during which the employee was required to sign and date the form to indicate his or her acceptance or rejection of the offer. (Id.) In the section to be signed by employees who accepted the offer, the letter stated:

> I hereby accept this conditional offer under the Incentive Program for Retirements. The effective date of my retirement will be April 30, 2002 unless a two-month extension of my retirement date is required by Management.
>
> I acknowledge that Management will make the final determination of my retirement date and may require a two-month extension of my retirement date to June 30, 2002.
>
> I acknowledge that Management will make a final selection of separations to be accepted under this Program on the basis of corporate service.
>
> I acknowledge that I have had reasonable time to consider this conditional offer, that I have been informed to discuss it with my attorney and/or financial advisor, and that my acceptance of this conditional offer is completely voluntary on my part and was in no way forced upon me by DaimlerChrysler Corporation.
>
> I acknowledge that my election to separate under this Incentive Program for Retirements is irrevocable after March 28, 2002 by me or by others.

(Id.)

In January of 2002, Plaintiff attended a regular membership meeting of UAW Local 1264, and learned that an early retirement offer would be forthcoming. On January 24, 2002, she received an estimate of her benefits under the DaimlerChrysler – UAW pension plan. When Plaintiff arrived at work on March 13, 2002, she received a copy of the above-cited IPR letter, accompanied by a package of materials that further explained this early retirement offer and estimated the retirement benefits Plaintiff would receive if she accepted. These materials reiterated that "[i]f you accept this conditional offer, you must retire on the date indicated in your offer letter, subject to any determination by Management that an extension of that date is needed and also subject to any conditional terms that the application for retirement be accepted by Management as indicated in your conditional offer letter." (Plaintiff's Response, Ex. IPR package at 2,)

On March 18, 2002, UAW Local 1264 conducted an informational meeting to "explain all options available to members who have received an I.P.R. package." (Plaintiff's Response, Ex. 4.) Because of a doctor's appointment, Plaintiff was unable to attend this meeting, but she was assured that she could contact her union representatives to address any questions she might have about the early retirement offer. Accordingly, on March 25, 2002, Plaintiff went to the Local 1264 office and met with two union benefit representatives, Tom Nizich and Kathy Scorpio-Butina.

This March 25, 2002 meeting is pivotal to Plaintiff's claims in this case. According to the complaint and the testimony at her deposition, Plaintiff had not yet signed her offer letter, and still had not made up her mind whether to accept the offer. Plaintiff testified that she asked Nizich and Scorpio-Butina, "If I sign this letter, and later I decide that I

can't go through with this retirement, can I still change my mind?" (Plaintiff's Dep. At 39) According to Plaintiff, both Nizich and Scorpio-Butina assured her that "[y]ou have until the day you sign the final retirement paper to change your mind." (Id.) There was no discussion of the language of the IPR letter stating that an employee's acceptance was "irrevocable after March 28, 2002." Plaintiff signed the letter that same day, indicating her acceptance of the IPR offer.[1] She acknowledge at her deposition that she read the entire letter before she sign it, including that statement tat her acceptance was "irrevocable." (Plaintiff's Dep. At 109,112.)

On June, 2005 Morris Simms, DaimlerChrysler's Senior Manager of Human Resources at the Sterling Stamping Plant, approved Plaintiffs eligibility for IPR offer, and established June 30, 2002 as her retirement date. That same day, however, Plaintiff submitted a letter to Alvin Davis, the supervisor of the union relations at the plant, stating that "I do not wish to accept the retirement package" and "do not wish to retire on June 30, 2002." (Plaintiff Response, Ex. 7.) On June 10, 2002, Plaintiff sent another letter to Davis, reiterating her desire to decline the early retirement offer and continue working. (Plaintiff's Response, Ex. 8.)

Following this initial correspondence, Plaintiff sent two additional letters to more senior UAW officials, stating that she had been told by Tom Nizich that "I could reverse my

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[1]To the accurate, letter reflects a signature date of ***April*** 25, 202. (See Complaint, Ex. A.) Plaintiff confirmed at her deposition, however, the date is incorrect, and that she actually signed the letter on March 25, 2002. (See Plaintiff's Dep. At 35, 40.)

[2]Plaintiff has produced a memo, apparently authored by Nizich, indicating that Plaintiff was one of seven employees represented by Local 1264 who sought to revoke their acceptance of the IPR. (See Plaintiff's Response, Ex. 11)

decision to retire by not signing the final retirement papers," but that Nizich now was "saying the Company will force me to retire." (Plaintiff's Response, Ex. 9.)[2] In response, Plaintiff received a June 20, 2002 letter from John Rudzinski, the International Benefit Representative for UAW's DaimlerChrysler Department, stating that the terms of the IPR were "totally different from a "regular retirement."

(Plaintiff's Response, Ex. 10.)
In particular, Rudzinski explained:

> Under normal circumstances, an employee has the right to revoke their decision up till the last day of the month prior to the commencement of retirement benefits.
>
> However, as stated just above your signature on your acceptance of the offer, your decision is irrevocable after March 28, 2002. Additionally, this was explained at the informational meetings held for anyone interested in the incentive offer.

(Id.)

When Plaintiff reported for work as usual on July 1, 2002 she was told that she was now considered a retired employee, and she was escorted from the facility. To date, Plaintiff apparently has never completed the paperwork necessary to begin collecting retirement benefits. Instead, on July 3, 2002, Plaintiff sent a letter to the President of UAW Local 1264 protesting her removal from active employment. (See Plaintiff's Response, Ex. 12.) When Local 1264 declined to pursue her grievance, Plaintiff sent a letter to UAW President Ron Gettelfinger appealing this decision. In a letter dated December 5, 2002, Gettlefinger denied this

appeal, stating:

> Your appeal to this office postmarked September 12, 2002 has been considered. Your submission chronicles the circumstances surrounding your contention that you should be returned to active employment.
>
> Investigation reveals that a 2002 Incentive Program for Retirements was offered at the Sterling Stamping Plant with a conditional offer period from March 13, 2002 through March 28, 2002 for eligible represented hourly employees. Eligible employees received a letter explaining the offer in sufficient detail.
>
> You have made your position the subject of an appeal to the Local Union Membership and the UAW National DaimlerChrysler Department. Unable to locate a violation of the agreement or a duty breached, both determined your appeal requires an interpretation of the agreement.
>
> For the reasons cited above, the UAW International DaimlerChrysler Department has determined that the issues raised in your communications do not depict a violation of the Agreement; it requires an interpretation of the 2002 Incentive Program for Retirements Conditional Offer Letter. It is held that your election to separate under the Incentive Program for Retirements is irrevocable.
>
> The UAW International DaimlerChrysler Department is responsible for negotiating and implementing the agreement and any supplement thereof. Because their interpretation is correct, I am ruling on this appeal pursuant to Article 33, Section 2(b) of the International Constitution.

> The appeal is denied and there is no further appeal from this decision.

(Plaintiff's Response, Ex. 14.)

On June 26, 2002. while she was still pursuing her remedies under the CBA, Plaintiff commenced this action by filling a terse two-page *pro se* complaint seeking reinstatement to active employment. She subsequently retained counsel, through whom she was filed a first amended complaint that more thoroughly present her allegations and theories of recovery. Specifically, this amended pleading advances breach of contract and breach of fiduciary duty claims against DaimlerChrysler, the UAW, and UAW Local 1264, arising under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., and Michigan common law. Although Plaintiff now concedes that she cannot pursue her state-law claim of wrongful discharge, she contends that she has produced sufficient evidence to sustain her theories of recovery.

III. ANALYSIS

A. The Standards Governing Defendants' Motions

Through their present motions, Defendants seek summary judgment in their favor pursuant to Federal Rule of Civil Procedure 56. Under this Rule, summary judgment is proper "if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to entitled to judgment as a matter of law." Fed. R. Civ. P.

56(c). In case, the record is limited and largely undisputed, resulting in a fairly straightforward Rule 56 inquiry. Accordingly, the Court now turns to this task.

B. Plaintiff Has Failed to Produce Evidence to Sustain Either Prong of Her Hybrid § 301 Claim.

As noted, Plaintiff has acknowledged that the state-law theory of recovery asserted in her first amended complaint is preempted by federal law – specifically, § 301 of the LMRA, 29 U.S.C. § 185 – by virtue of Plaintiff's status as a member of UAW Local 1264 and the existence of a CBA between the union and her employer, DaimlerChrysler. Thus, to the extent that Plaintiff's claims rest upon an alleged breach of an obligation owed by her employer under CBA or a related, collectively bargained agreement, they are governed by the standards of so-called "hybrid § 301" claims. As this Court previously has observed:

> It is well-settled hat for a union employee to maintain an action for breach of a labor contract against his employer, he must also establish that his union breached its duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rest on § 301, since the employee is alleging a breach of the collective bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation. *Vaca v. Sipes, supra, DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, S.Ct. 2281, 76 L.Ed.2d 476 (1983). The two claims are inextricably interdependent: To prevail against either the company or the Union, the employee-plaintiff must not only show that his discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty

> by the Union. *Id.*, 103 S.Ct. at 2290-91. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both. *Id.* at 2291.

Cotter v. DaimlerChrysler Corp., 87 F. Supp.2nd 746, 756 (E.D. Mich. 2000). Defendants argue, and the Court agrees, that Plaintiff cannot satisfy either prong of this standard. First, regarding the breach-of-contract element of a hybrid § 301 claim, Plaintiff does not contend that DaimlerChrysler breached any provision of the inderlying CBA. Rather, her claim rests upon the terms of the letter she signed on March 25, 2002, reflecting her apparent acceptance of the early retirement offer extended through DaimlerChrysler's 2002 Incentive Program for Retirements ("IPR"). Although the parties do not address the point, it is evident to the Court that the IPR, as an agreement negotiated between DaimlerChrysler and the UAW that supplements the underlying CBA, should be "treated in the same manner as the collective bargaining agreement" itself. Cotter, 87 F. Supp.2d at 757.[3] In particular, to determine whether the IPR was breached, the Court looks first to "plain meaning of the agreement." Roeder v. American Postal Workers Union. AFL-CIO, 180 F.3d 733, 737 (6th Cir. 1999).

If the terms of the IPR are defined solely by reference to the letter and accompanying written materials received by Plaintiff, it is clear that DaimlerChrysler did not breach this agreement by refusing to allow Plaintiff to rescind her

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[3]Because of the applicability of § 301 standards to the CBA and the IPR alike, the parties' various citation to Michigan court decisions are not particularly helpful here. Given the parties' apparent agreement that federal law governs the terms of Plaintiff's relationship with her employer, the Court fails to see why it should look to ruling on Michigan contract law.

acceptance of the early retirement offer. The letter signed by Plaintiff states in the plainest terms that her acceptance was "***irrevocable after March 28, 2002*** by me or by others." (First Amended Complaint, Ex. A. (emphasis added).) The accompanying materials are fully consistent with this provision, stating at one point that "[i]f you accept this conditional offer, you must retire on the date indicated in your offer," subject only to certain conditions imposed by management at its discretion. (Plaintiff's Response, Ex. 3 IPR package at 2.) Plaintiff acknowledges that she read the letter before signing it, and she does not contend that she was in any way coerced into accepting the offer of early retirement. Moreover, Plaintiff concedes that she did not attempt to revoke her acceptance until June 5, 2002, cut-off date set forth in the letter.

Nonetheless, Plainiff suggests two theories under which DaimlerChrysler could be deemed to have breached the early retirement agreement. First, she cites the various places, in both the letter and the accompanying materials, where the offer of early retirement is characterized as "conditional." The letter itself, for example, is captioned "2002 Incentive Program for Retirements Conditional Offer Letter." Plainiff reasons that she was free to revoke her acceptance of this "conditional" offer until it was fully exccuted through the completion of her final retirement paperwork. Yet, as DaimlerChrysler points out, the letter itself plainly discloses the conditions upon the offer of early retirement: (i) that "Management will make the final determination" of the employee's exact retirement date, choosing between April 30 and June 30, 2002; and (ii) that "Management will make a final selection of separations to be accepted under this Program on the basis of corporate service." (First Amended Complaint, Ex. A.) These conditions ran entirely in favor of the company – an acceptance of the early retirement offer, in

other words, was conditional upon management's authority to make the final selection of which employee offers to accept. Nothing in these conditions gave Plaintiff the power to rescind her acceptance after March 28, 2002.

Next, Plaintiff suggests that the terms of the IPR were modified by virtue of the assurances of two union benefit representatives, Tom Nizich and Kathy Scorpio-Butina, that she could revoke her acceptance at any time before she completed her final retirement paperwork. As an initial matter, Defendants correctly note the absence of any evidence that these two employees, who evidently did not hold any sort of management position, had the authority to bind DaimlerChrysler or modify the terms of the IPR through their oral representations to Plaintiff.[4]

More importantly, federal labor law forecloses any possible recourse to an individual side agreement, whether written or oral, that is inconsistent with the terms of the underlying CBA. Plaintiff contends, in essence, that the verbal assurances of union representatives Nizich and Scorpio-Butina gave rise to an individual contractual right, over and above the terms of the IPR, to revoke her acceptance at any time before she completed her final retirement paperwork. Yet, "[a] collective bargaining agreement . . . supersedes an individual employment contract to the extent that they are inconsistent." Loewen Group International, Inc. v. Haberichter, 65 F.3d 1417, 1423 (7th

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[4]Indeed, because Plaintiff did not take the depositions of these individuals, and has not otherwise addressed the extent of their authority to bind their employer or the union through their statements about the proper cinstruction of the terms of the IPR, it is not clear as an evidentiary matter that their hearsay statements concerning Plaintiff's opportunity to revoke her acceptance would be admissible at trial. Cf. Fed. R. Evid. 801(d)(2)(D).

Cir. 1995); see also J.T. Case Co. v. N.L.R.B., 321 U.S. 332, 339, 64 S. Ct. 576, 581 (1943) (holding that "[i] ndividual contracts cannot subtract from collective ones"); Maushund v. Earl C. Smith, Inc., 795 F.2d 589, 590 (6th Cir. 1986) ("The collective bargaining process prohibits [a represented employee] from engaging in separate negotiations with the company and precludes any actions to enforce such an agreement."); cf. Wells v. General Motors Corp., 881 F.2d 166, 174 (5th Cir.1989) (finding that state-law claims "founded upon contractual rights or common-law rights independent of those which the collectively-bargained agreement creates" are not preempted by the LMRA). The inconsistency here could hardly be more pronounced – the acceptance given by other employees was irrevocable under the terms of the IPR letter, but Plaintiff remained free to revoke her acceptance under the individual agreement conferred upon her by Nizich and Scorpio-Butina. Plaintiff has cited no authority for the proposition that federal labor law would recognize such an individual agreement, in direct contravention of the collective deal struck on behalf of Plaintiff and her fellow union members by their designated bargaining representative.

A more promising avenue for Plaintiff, though one that she has failed to pursue in her submissions to the Court, rests upon the principle of estoppel. The Sixth Circuit has held that "[t]he equitable doctrines of estoppel and waiver are applicable in a section 301 action to enforce a labor contract." Apponi v. Sunshine Biscuits, Inc., 809 F.2d 1210, 1217 (6th Cir. 1987). More recently, the Court confirmed that "[t]he federal common law of contract applicable under the LMRA includes the doctrine of promissory estoppel." Anderson v. AT&T Corp., 147 F.3d 467, 477 (6th Cir. 1998). The Court has elaborated:

> The elements constituting estoppel, as defined by federal common law, are: (1) conduct or language amounting to a representation of material facts; (2) the party to be estopped must be aware of the true facts; (3) the party to be estopped must intend that the representation be acted on or act such that the party asserting the estoppel has a right to believe it so intended; (4) the party asserting the estoppel must be unaware of the true facts; and (5) the party asserting the estoppel must detrimentally and justifiably rely an the representation.

Apponi, 809 F.2d at 1217.

Plaintiff seemingly could establish at least some of these elements of a claim of estoppel. The statements allegedly made by union benefit representatives Nizich and Scorpio-Butina arguably qualify as representations of an undeniably material fact-namely, that Plaintiff could revoke her acceptance of the early retirement offer at any time prior to her execution of the final retirement documents.[5] Next, in making these alleged statements. Nizich and Scorpio-Butina surely intended and understood that Plaintiff would use this information in her decision whether to accept the early retirement offer. Indeed, Plaintiff testified testified that she signed the IPR letter immediately after she was assured that she could still revoke her acceptance.

The evidence regarding the second prong of a claim of a claim of estoppel is somewhat more equivocal, however. The record is wholly silent as to Nizich's or Scorpio-Butina's awareness of the "true fact" that Plaintiff's acceptance was

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[5]Although these statements could also be construed as expressing a mere opinion – and not a particularly well-informed one, at that – the Court assumes for present purposes that they qualify as assertions of fact.

not revocable after March 28, 2002. One could presume, perhaps, that these union representatives surely must have known this fact, by virtue of the plain language of the IPR letter disclosing this information.[6] Yet, other evidence produced by Plaintiff herself casts doubt on this assumption. In particular, the June 20, 2002 letter received by Plaintiff from John Rudzinski, an International Benfit Representative for the UAW DaimlerChrysler Department, states that an employee's decision concerning a "regular retirement" is revocable "up till the last day of the month prior to the commencement of retirement benefits." (Plaintiff's Response, Ex. 10.) Thus, it is possible that Nizich and Scorpio-Butina responded to Plaintiff's inquiry by providing this "regular retirement" information, perhaps unaware that the IPR was governed by different rules. Moreover, while the Sixth Circuit has recognized that a speaker's "apparent authority" might "satisfy (or at least...stand in for) the awareness element" of a claim of estoppel, Anderson, 147 F.3d at 477, the Court already has noted the absence of evidence that Nizich or Scorpio-Butina had the authority to bind either the union or DaimlerChrysler through their statements about the terms of the IPR.

In any event, no reasonable trier of fact could conclude that Plaintiff has satisfied the fourth or fifth elements of an estoppel-based theory of recovery. Under the fourth prong, Plaintiff must show that she was "unaware of the true facts." Yet, she was expressly told, in the language of the IPR letter appearing directly above her signature, that her acceptance of the early retirement offer was "irrevocable after March 28, 2002." The Sixth Circuit has held that the "unawareness"

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[6]As discussed below, the self-evident nature of this fact might favor Plaintiff on this element of estoppel, but cuts sharply against her as to other elements.

element of a claim of estoppel encompasses both the facts actually known to a party and those which the party had the means to ascertain. Trustees of Michigan Laborers' Health Care Fund v. Gibbons, 209 F.3d 587, 593 (6th Cir. 2000). Even if Plaintiff did not actually read the IPR letter before she signed it – and she achnowledged otherwise at her deposition – she readily could have ascertained the deadline for revoking her acceptance, merely by noting the explicit and unambiguous disclosure of this deadline is the letter itself.

For similar reasons, Plaintiff cannot establish that she detrimentally and justifiably relied on the representations of Nizich and Scorpio-Butina that she could revoke her acceptance beyond the March 28, 2002 deadline set forth in the IPR letter. In particular, while Plaintiff's deposition testimony that she relied on these representations to her detriment, the evidence does not support a finding that this reliance was justified. In the analogous context of an ERISA-based claim of estoppel, the Sixth Circuit has emphasized that "party's reliance can seldom, if ever, be reasonable or justifiable if it is inconsistent with the clear and unambiguous terms of plan documents available to or furnished to the party." Spraque v. General Motors Corp., 133 F.3d 388, 404 (6th Cir. 1998). The courts have adopted this reasoning in a number of other cases where the factual assertion purportedly relied upon is directly contradicted by express, unambiguous terms of the parties' written agreement. See, e.g., Gibbsons, 209 F.3d at 593-94; Armbruster v. K-II Corp., 206 F. Supp.2d 870, 894 (E.D. Mich. 2002); Easa v. Florists' Transworld Delivery Ass'n, 5 F. Supp.2d 522, 526-27 (E.D. Mich. 1998) Again, the IPR letter here was direct and unambiguous in establishing a deadline of March 28, 2002 for revocation, and Plaintiff would not have been justified in relying on the

alleged assertions of union representatives to the contrary. Accordingly, the Court finds that the record fails to support the breach-of-contract prong of Plaintiff's hybrid § 301 claim.

In addition, it appears doubtful that plaintiff could establish the second prong of this claim, a breach of the union's duty of fair representation. "To meet [her] burden of proof as to the union's breach of its duty of fair representation, a plaintiff must establish by substantial evidence that the union acted arbitrarily, discriminatorily or with bad faith." Cotter, 87 F. Supp.2d at 756. Regarding the alleged misstatements of union representatives Nizich and Scorpio-Butina concerning Plaintiff's right to revoke her acceptance, the record indicates, a worst, that these statements rested upon a mistaken assumption that the "regular retirement" rules applied as well to the IPR. Such a mistaken judgment "would at most be negligence," and "[m]ere negligence is insufficient to establish a breach of the duty of fair representation." Poole v. Budd Co., 706 F.2f 181, 184 (6th Cir. 1983). As for the union's decision not to pursue Plaintiff's grievance, the December 5, 2002 letter from UAW President Ron Gettelfinger sets forth the union's view that this grievance was based upon an interpretation of the IPR that the union deemed incorrect. These are "rational and objective grounds" for the union to decline to pursue Plaintiff's grievance, Cotter, 87 F. Supp.2d at 757, and therefore defeat any claim that the union acted arbitrarily, discriminatorily, or in bad faith in this matter.

C. Plaintiff Has Failed to State a Viable Claim under ERISA.

Having found no evidence to sustain a claim under § 301 if the LMRA, this leaves only Plaintiff's various

ERISA-based theories of recovery. In support of their summary judgment motions, Defendant contend that ERISA does not reach the allegations made by Plaintiff in this case. The Court agrees.

The reach of ERISA is undeniably broad, superseding "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29U.S.C. § 1144 (a). The IPR at issue here undoubtedly conferred "benefits" upon DaimlerChrysler employees, including a lump-sum severance payment and a credit toward the purchase or lease of a vehicle. Yet, in Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 107 S. Ct. 2211 (1987), the Supreme Court held that ERISA did not preempt a Maine stature mandating one-time severance payments to employees in the event of a plant closing, reasoning that such a one-time payment did not give rise to an ongoing administrative scheme that reasonably could be termed a "plan."

Based on the reasoning of Fort Halifax and other Supreme Court decisions addressing the preemptive scope of ERISA, the courts have held that claims involving early retirement programs are not governed by ERISA, absent a substantial link between the claim and an employee benefit plan. In Wells v. General Motors Corp., 881 F.2d 166, 175-76 (5th Cir. 1989), for example, the Fifth Circuit relied on Fort Halifax in concluding that a voluntary termination program with severance pay was not an "employee benefit plan" within the meaning of ERISA. Accordingly, the Court found that ERIA did not preempt the plaintiffs' state-law claims that they had been fraudulently induced to accept this program.

Similarly, in Forbus v. Sears Roebuck & Co., 30 F.3d 1402, 1405-06 (11th Cir. 1994), the Eleventh Circuit found that ERISA did not preempt a claim that an employer had fraudulently induced the plaintiff employees to accept a

retirement package by falsely stating that their facility was closing and their jobs would be eliminated. In so ruling, the Court distinguished prior cases in which employees had retired in reliance on false representations about the retirement benefits they would receive. See Forbus, 30 F.3d at 1406. The Court reasoned that the alleged misrepresentation is the case before it "did not involve a benefit plan – it involved the very existence of the plaintiffs' jobs." 30F.d at 1406. Nor was a finding of preemption warranted, in the Court's view, by the "mere fact that the plaintiffs' damage may be affected by calculation of pension benefits." 30 F.3d at 1406-07.

This Court previously has reached a similar conclusion, albeit in the somewhat distinct context of "complete preemption." In Hanks v. General Motors Corp., 26 F. Supp.2nd 977, 978-79 (E.D. Mich. 1998), the plaintiff employee had been receiving workers' compensation benefits for a number of years, and then inquired of her employer, defendant General Motors, whether these benefits would be jeopardized if she began collecting benefits from her employer-sponsored pension plan. A General Motors employee assured the Plaintiff that she could simultancously receive both workers' compensation and pension benefits, and she began drawing pension benefits in reliance on this representation. A short time later, her workers; compensation benefits were terminated pursuant to a coordinated benefits clause in the governing insurance policy. The plaintiff the brought suit in state court, asserting claims of fraudulent and negligent misrepresentation.

General Motors removed the case to federal court, contending that the plaintiff's state-law claims were completely preempted under ERISA. This Court remanded the case to state court, however, reasoning that the doctrine of complete preemption did not apply because the plaintiff

was "not attempting to recover benefits due under the terms of" the General Motors pension plan. Hanks, 26 F. Supp.2d at 983. Rather, the plaintiff sought "to rescind her decision to draw [pension] benefits on the ground that [her employer] allegedly made misrepresentations which led her to believe she was entitled to workers' compensation benefits ***in addition*** to the benefits due under the [pension plan] itself." 26 F. Supp.2d at 983. Thus, the Court found that the plaintiff's state-law claims "only tangentially implicate[d] the ERISA benefit plan" offered by her employer. 26 F. Supp.2d at 983.

Although Hanks addresses complete rather than ordinary preemption, it is entirely consistent with the above-cited decisions in recognizing that ERISA does not reach any and all claims that "tangentially implicate" an employee benefit plan. These rulings are fully applicable here. Where the lump-sum payments promised under DaimlerChrysler's IPR did not give rise to an "employee benefit plan" governed by ERISA. Nor do Plaintiff's claims and allegations directly implicate the terms of any employee benefit plan offered by her employer; she does not assert, for example, that her acceptance of the IPR offer was based upon any sort of misrepresentation about the types or amount of retirement benefits would receive.

Indeed, Plaintiff has given no reason whatsoever for seeking to revoke her acceptance. Rather, she more broadly asserts that the period of revocation had not yet closed at the time she changed her mind, so that she was free to revoke her acceptance for any reason whatsoever. As in Forbus, all alleged misrepresentation here concerns Plaintiff's right to continued employment, and not merely her right to a different level of benefits. Plaintiff seeks "to set aside and escape from the retirement agreement, not to recover under it or to 'enforce' it or to assert 'right to future benefits under

the terms of the plan.'" Warner v. Ford Motor Co., 46 F.3d 531, 534 (6th Cir. 1995) (holding, as in Hanks, that such a claim is not completely preempted under ERISA). Although Plaintiff's plea for damages might encompass benefits under various DaimlerChrysler plans, the above-cited cases hold, and Sixth Circuit precedent confirms, that this sort of indirect involvement of an employee benefit plan does not trigger ERISA preemption. See Wright v. General Motor Corp., 262 F.3d 610, 615 (6th Cir. 2001); Fordus, 30 F.3d at 1406-07. Consequently, the Court finds that ERISA affords no remedy in this case, and the Plaintiff's claims instead are governed by the standards of § 301 of the LMRA.

In any event, any such ERISA claim in this case would face considerable difficultly on the merits. Even if ERISA were deemed to govern the DaimlerChrysler IPR, ERISA plans, like CBAs, generally are resistant to attempts at oral modification. See Spraque 133 F.3d at 402-03. Consequently, Plaintiffs best resort again would be to an estoppel-base theory of recovery. Yet, the Sixth Circuit has applied precisely the same five-part estoppel standard to claims under the LMRA and ERISA alike. See Spraque, 133 F.3d at 403-04; Armistead v. Veritron Corp., 944 F.2d 1287, 1298-1300 (6th Cir. 1991). Thus, in light of the unambiguous provisions of the IPR itself, a claim of estoppel here would fare no better under ERISA than under the LMRA. See Spraque, 1233 F.3d at 404.

This leaves only Plaintiff's contention that Defendants breached a fiduciary duty owed under ERISA. As explained in Spraque, an employer may act "in a fiduciary capacity when it explain[s] its retirement program to [its] early retirees." Sprague, 133 F.3d at 405. This rule extends only to explanations of "plan benefits," however, see Sprague, 133 F.3d at 405, and hence is unavailing to Plaintiff in this case, where the Court already has concluded that the IPR does not

qualify as a "plan" under ERISA.

Moreover, the Court Previously has noted the complete absence of evidence that the individual who purportedly explained the IPR to Plaintiff, Tom Nizich and Kathy Scorpio-Butina, and the authority to bind either Defendant through their statements. To be sure, the court has little reason to doubt the assertion that individuals in the role of "union benefit representatives" have been granted the authority to answer the benefit questions of union members. Yet, such an assertion necessarily must rest upon ***some*** evidentiary foundation, and Plaintiff simply has failed to provide one here. Accordingly, Defendants are entitled to summary judgment in their favor on Plaintiff's ERISA-based theories of recovery.

IV. CONCLUSION

For the reasons set forth above,

NOW, THERFORE, IT IS HERBY ORDERD that Defendant DaimlerChrysler Corporation's February 28, 2003 Motion of Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Defendant UAW Local 1264's March 4, 2003 Motion for Summary Judgment also is GRANTED.

Gerald E. Rosen
United States District Judge